

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION**

**LAVOSKA OVERTON**

**PLAINTIFF**

**VS.  
JMV**

**CIVIL ACTION NO.: 4:15CV188-GHA-**

**HUMPHREYS COUNTY, MISSISSIPPI,  
CLEVELAND ROSS, J. D. "BUBBA" ROSEMAN,  
(In Both His Official and Individual Capacities) AND  
JOHN DOES 1-15**

**DEFENDANTS**

**MOTION TO SET ASIDE AN ENTRY OF DEFAULT**

**COMES NOW**, the defendants, Humphreys County, MS, Cleveland Ross and J. D. "Bubba" Roseman, by and through counsel, pursuant to Rule 55(c), FRCP, and move the Court to set aside the Clerk's entry of default (Doc. # 7) entered on January 22, 2016 in this cause, and in support hereof would show unto the Court the following, to-wit:

1. The Complaint (Doc. #1) was filed on December 23, 2015, and process served on defendants on December 9, 2015.
2. That the responsive pleadings of defendants including, but not limited to, an answer and defenses were due on January 19, 2016.
3. That on Monday, January 4, 2016, undersigned counsel for

Humphreys County, a member of the Mississippi Legislature, attended a meeting of the Humphreys County Board of Supervisors where he received e a copy of the Summons and Complaint to deliver to the liability insurance carrier for Humphreys County and the Humphreys County Sheriff's Department.

4. That the 2016 Miss. Legislature was convening on said date and counsel went to Jackson to be sworn in and attend the first week of the 2016 Legislative Session.

5. That the copy of the Summons and Complaint received by counsel from defendants were carried to Jackson with the full intention of forwarding it to the insurance carrier for the purpose of providing a defense once the undersigned return to his office in Greenville on January 8, 2016.

6. That through mistake, oversight and excusable neglect counsel forgot to forward the summons and complaint to the County's insurance carrier as he has done on prior occasions.

7. That on January 21, 2016, Plaintiff filed a Request for Entry of Default (Doc. #6) with the Court, the Clerk entered default (Doc#7) against defendants and a copy was mailed to defendants by counsel for Plaintiff on January 22, 2016, and received by defendants on January 25, 2016.

8. That defendants would that they have good cause for the Court to set aside the Clerk's entry of default and meet the factors established by the Fifth

Circuit to weigh in considering whether to grant a motion to set aside a Clerk's entry of default as follows:

A. The failure to timely answer or otherwise file responsive pleading was due to mistake, oversight and/or excusable neglect by counsel for the defendants who received the summons and complaint during the Board meeting of January 4, 2016, and took them to Jackson yet forgot to send them to the County's insurance carrier as is the custom and practice of undersigned counsel for defendants. Hence, the action of counsel was negligence at best and not willful;

B. Setting aside the entry of default will not prejudice the Plaintiff since the sole action taken by Plaintiff in this cause is the filing of the Complaint and the request for entry of default. Further, there is no evidence that Plaintiff case will suffer any future harm since the delay, if any, herein will be brief and no evidence will be loss;

C. The defendants represent to the Court that they have meritorious defenses to this cause and fully intends to defend this cause through the use of its liability insurance carrier; and

D. The defendants have acted expeditiously to seek relief from this Court.

9. That this motion is not being served for the purpose of delay but in order that justice may be served.

10. In support of this motion defendants attach the affidavit of Willie L. Bailey, as Exhibit "A".

RESPECTFULLY SUBMITTED, this the 27<sup>th</sup> day of January, 2016.

HUMPHREYS COUNTY, MISSISSIPPI, et al.

By: /s/ WILLIE L. BAILEY  
WILLIE L. BAILEY, MSB# 1702  
**BAILEY & GRIFFIN, P.A.**  
1001 MAIN STREET  
POST OFFICE BOX 189  
GREENVILLE, MS 38702-0189  
TELEPHONE: (662) 335-1966

**CERTIFICATE OF SERVICE**

I, Willie L. Bailey, attorney for Humphreys County, Mississippi, *et al.*, do hereby certify that I have this day, filed electronic the foregoing with the Clerk of Court by using the EFC system, which sent notification of such filing to the following:

Ronald E. Stutzman, Jr., Esq.  
The Stutzman Law Firm, PLLC  
513 Keywood Circle  
Flowood, MS 39232

**CERTIFIED**, this the 27<sup>th</sup> day of January, 2016.

/s/ WILLIE L. BAILEY  
WILLIE L. BAILEY